

1 DAN R. WAITE
Nevada Bar No.4078
2 LEWIS ROCA ROTHGERBER, LLP
3993 Howard Hughes Parkway
3 Suite 600
4 Las Vegas, NV 89169
Telephone: (702) 949-8200
5 Facsimile: (702) 949-8398
Email: dwaite@lrrlaw.com

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7 *Attorney for Defendant CNU Online Holdings, LLC, incorrectly sued as Enova International, Inc.*

8 **IN THE UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 FLEMMING KRISTENSEN, individually and
on behalf of a class of similarly situated
11 individuals,

12 Plaintiff,

13 v.

14
15 CREDIT PAYMENT SERVICES INC., a
Nevada corporation, f/k/a
16 MYCASHNOW.COM INC., ENOVA
INTERNATIONAL, INC., an Illinois
17 corporation, PIONEER FINANCIAL
SERVICES, INC., a Missouri corporation,
18 LEADPILE LLC, a Delaware limited liability
company, and CLICKMEDIA LLC d/b/a
19 NET1PROMOTIONS LLC, a Georgia limited
liability company,

20
21 Defendants.

Case No. 2:12-CV-00528-KJD (PAL)

**DEFENDANTS' SECOND JOINT
MOTION TO EXTEND THE
DEADLINES FOR DISCOVERY,
DISPOSITIVE MOTIONS, AND
PROPOSED JOINT PRETRIAL ORDER**

Judge: Hon. Andrew P. Gordon

Magistrate: Hon. Peggy A. Leen

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24 COME NOW Defendants CNU Online Holdings, LLC, incorrectly sued as Enova
International, Inc. ("CNU"), Credit Payment Services, Inc. ("CPS"), Pioneer Services ("Pioneer"),
25 and LeadPile LLC ("LeadPile") (collectively, "Defendants"), by and through their respective
26 counsel, and hereby submit their Second Joint Motion to Extend the Deadlines for Discovery,
27 Dispositive Motions, and Proposed Joint Pretrial Order. In support of this Motion, Defendants
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1 state as follows:

2 1. This Court entered a Stipulated Discovery Plan and Scheduling Order on July 23,
3 2013 (“the Scheduling Order”) (Doc. 93).

4 2. Plaintiff filed his Motion to Certify Class on October 31, 2013 (“Motion to
5 Certify”) (Doc. 113). This Court ruled on the Motion to Certify on March 26, 2014 (Doc. 164).

6 3. Defendants filed a Joint Motion to Extend Certain Deadlines (Doc. 166), which
7 was granted on April 4, 2014 (Doc. 167) and certain deadlines were extended, including the
8 discovery deadline to May 26, 2014, the dispositive motion deadline to July 24, 2014, and the
9 proposed joint pretrial order deadline to August 22, 2014.

10 4. To date, the parties are still responding to discovery, producing documents, and
11 taking depositions.

12 5. With regard to written discovery, the document review and production is ongoing.
13 Indeed, Plaintiff propounded additional written discovery upon Defendants as recently as March
14 31, 2014. Specifically, Plaintiff propounded his second set of interrogatories on CPS, Pioneer,
15 and CNU; his third set of interrogatories on LeadPile; his second set of document requests on
16 CPS, Pioneer, LeadPile, and CNU; and his first set of requests to admit on CPS, Pioneer,
17 LeadPile, and CNU. CPS, Pioneer and CNU timely responded and objected to Plaintiff’s
18 discovery, but the document review continues. LeadPile obtained an extension to respond to
19 Plaintiff’s discovery to May 21, 2014. Further, on April 11, 2014, Plaintiff issued subpoenas to
20 various Defendants, their employees, and shareholders. The parties are in the process of
21 responding to the subpoenas.
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23 6. With regard to oral discovery, Defendants took Plaintiff’s deposition, but
24 Defendants are seeking to re-depose Plaintiff in light of documents that Plaintiff produced after his
25 deposition. Further, to date, Plaintiff still needs to depose certain Defendants. While the parties
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1 are diligently attempting to schedule Defendants' depositions, the ongoing document production
2 and scheduling issues will necessarily require some depositions to take place after May 26, 2014,
3 which is the current discovery deadline. Accordingly, Defendants request an additional 60 days to
4 complete discovery, up to and including July 25, 2014.

5 7. Further, Defendants request an extension of the dispositive motion deadline to 15
6 days after the close of the opt-out period. Defendants also request an extension of the proposed
7 joint pretrial order deadline to 45 days after the close of the opt-out period. Defendants believe
8 that extending these deadlines is appropriate to avoid one-way intervention. The authorities
9 support these extensions.
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11 8. In *Schwarzchild v. Tse*, the Ninth Circuit stated: "[D]istrict courts generally do not
12 grant summary judgment on the merits of a class action until the class has been properly certified
13 and notified. The purpose of Rule 23(c)(2) is to ensure that the plaintiff class receives notice of
14 the action well *before* the merits of the case are adjudicated." *Schwarzchild v. Tse*, 69 F.3d 293,
15 295 (9th Cir. 1995) (emphasis in original). Citing *Schwarzchild*, the Southern District of
16 California held that it would not rule on a plaintiff's motion for summary judgment until the notice
17 was given and period for class members to exclude themselves had expired. *Gomez v. Rossi*
18 *Concrete Inc.*, No. 08cv1442 BTM (CAB), 2011 WL 666888, at *1 (S.D. Cal. Feb. 17,
19 2011). That court agreed that "postponing the determination of Plaintiffs' motion for summary
20 judgment until after class members have been given notice and an opportunity to opt-out is
21 necessary to avoid the problem of 'one-way intervention' – whereby a potential class member
22 could await the outcome of a determination on the merits before deciding whether to join the
23 class." *Id.* The *Gomez* court added that "[a]bsent extraordinary circumstances, it is appropriate to
24 postpone ruling on a plaintiff's motion for summary judgment until after class definition issues are
25 settled, notice has been given, and the period for class members to exclude themselves has
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1 expired, in order to protect the defendant from ‘absent class members . . . opting in or out
2 depending upon the outcome on the merits.’” *Id.*

3 9. Cases outside the Ninth Circuit also support the requested extensions. *See Hyland*
4 *v. HomeServices of Am., Inc.*, No. 3:05-CV-612-R, 2011 WL 6400637, at *3 (W.D. Ky. Dec. 21,
5 2011) (“Class members must be given the opportunity to opt-out of the class before any adverse
6 summary judgment and trial . . . All of this must, of course, occur before the Court rules on any
7 motion for summary judgment.”); *see also In re Farmers Ins. Co., Inc. FCRA Litig.*, No. CIV-03-
8 158-F, MDL 1564, 2006 WL 1042499, at *2 (W.D. Ok. Apr. 13, 2006) (“Moreover, notice is to be
9 sent before the merits of the case are adjudicated. Indeed, without notice, the court lacks
10 jurisdiction over the absent class members. Thus, unless absent class members are given an
11 opportunity to opt out of the class, any summary judgment in favor of defendant would only be
12 binding on the named plaintiffs.”) (citations omitted).

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14 10. Finally, Wright & Miller states: “[t]hus, notice must be sent long before the merits
15 of the case are adjudicated.” CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE,
16 *Federal Practice and Procedure* § 1788 (3d ed. 2014).

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18 11. Accordingly, Defendants request extensions of the dispositive motion and proposed
19 joint pretrial order deadlines.

20 12. CNU’s counsel has conferred with ClickMedia’s counsel regarding the proposed
21 extension and ClickMedia has no objection to the extensions.

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23 13. CNU’s counsel has conferred with Plaintiff’s counsel regarding the proposed
24 extension and Plaintiff’s counsel advised that Plaintiff opposes this motion and will file an
25 opposition.

1 14. The extension requested is not the result of any undue delay, bad faith or
2 dilatory motive. Good cause exists and the request is not submitted for any improper purpose.
3 No party will be prejudiced by this extension.

4
5 WHEREFORE, Defendants, CNU Online Holdings, LLC, incorrectly sued as Enova
6 International, Inc., Credit Payment Services, Inc., Pioneer Financial Services, Inc., and LeadPile
7 LLC respectfully request that this Court grant this motion and extend the deadlines as follows:

- 8 a. Discovery deadline is extended to July 25, 2014.
- 9 b. Dispositive motion deadline is extended to 15 days after the close of the opt-out
10 period.
- 11 c. Proposed joint pretrial order deadline is extended to 45 days after the close of the
12 opt-out period.

13 Defendants also request that the Court enter whatever further relief this Court deems just
14 and appropriate.

15 Dated: May 5, 2014

16 LEWIS ROCA ROTHGERBER LLP

17 By: /s/ Dan R. Waite
18 Dan R. Waite
19 Nevada Bar No.4078
20 LEWIS ROCA ROTHGERBER, LLP
21 3993 Howard Hughes Parkway, Suite 600
22 Las Vegas, NV 89169
23 Telephone: (702) 949-8200
24 Facsimile: (702) 949-8398
25 Email: dwaite@lrrlaw.com

26 MCGUIREWOODS LLP

27 By: /s/ Brian P. O'Meara
28 Brian P. O'Meara
29 *Pro Hac* Vice IL Bar No. 6275624
30 77 West Wacker Drive Suite 4100
31 Chicago, IL 60601-1818
32 Telephone: 312-849-8100
33 Facsimile: 312-920-6132
34 Email: bomeara@mcguirewoods.com

***Attorneys for Defendant CNU Online Holdings,
LLC, incorrectly sued as Enova International, Inc.***

DENTONS US LLP

By: /s/ Steven Martin Aaron, Esq.
STEVEN MARTIN AARON
Pro Hac Vice MO Bar # 41653
Gregory T. Wolf, Esq.
Pro ice MO Bar #43717
4520 Main Street, 11th Floor
Kansas City, MO 64111-7100

LAW OFFICE OF HAYES & WELSH

By: /s/ Martin L. Welsh
Martin L. Welsh, Esq.
Nevada State Bar No. 8720
199 North Arroyo Grande Blvd., Suite 200
Henderson, Nevada 89074

***Attorneys for Defendant
Credit Payment Services, Inc.***

POLSINELLI PC

By: /s/ Russell S. Jones, Jr.
Russell S. Jones, Jr. *Pro hac vice*
James M. Humphrey, IV *Pro hac vice*
900 W. 48th Place, Suite 900
Kansas City, MO 64112

SNELL & WILMER, L.L.P.

By: /s/ Chad R. Fears, Esq.
Chad R. Fears, Esq., Nevada Bar No. 6970
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169

Attorneys for Defendant Pioneer Services

HUSCH BLACKWELL LLP

By: /s/ Ryan W. Mitchem
Ryan W. Mitchem, TN #022196
Michael K. Alston, TN #013697
736 Georgia Avenue, Suite 300

Chattanooga, Tennessee 37402

HUTCHISON & STEFFEN

Patricia Lee, Nevada Bar No. 8287

Joseph R. Ganley, Nevada Bar No. 5643

Telia U. Williams, Nevada Bar No. 9359

Peccole Professional Park

10080 West Alta Drive, Suite 200

Las Vegas, Nevada 89145

Attorneys for Defendant LeadPile LLC

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that on May 6, 2014, I caused the foregoing
DEFENDANTS' SECOND JOINT MOTION TO EXTEND THE DEADLINE FOR
DISCVOERY, DISPOSITIVE MOTIONS, AND JOINT PROPOSED PRETRIAL ORDER be
served on all counsel of record through the Court's CM/ECF system.

/s/ Brian P. O'Meara

An Attorney for Defendants

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